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OFFICE OF PETITIONS

In re	:	DECISION REGARDING
Donzis, et al.	:	PATENT TERM ADJUSTMENT
Application No. 09/668,786	:	
Filed: September 22, 2000	:	
Attorney Docket No.	:	
12154RXUS02U	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)", filed July 25, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from six hundred eighty-one (681) days to one thousand thirty-two (1032) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one thousand thirty-two (1032) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 27, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment

(PTA) to date is six hundred eighty-one (681) days. On July 25, 2005, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one thousand thirty-two (1032) days. Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants assert entitlement to a patent term adjustment of one thousand thirty-two (1032) days on the basis that the PTO improperly assessed Applicants a delay of one hundred seventy nine (179) days for responding to an Office action mailed on March 11, 2004. Applicants assert that they filed a response on June 14, 2004, not on December 7, 2004.

The Office initially determined a patent term adjustment of six hundred eighty-one (681) days based on an adjustment for PTO delay of eight hundred forty (840) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1) and twenty (20) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. §1.703(a)(2), reduced by Applicants' delay of one hundred seventy-nine (179) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b). The adjustments of 179 and 20 days are at issue.

The adjustment of 179 days has been found to be incorrect. Applicants have submitted a copy of a postcard receipt for the instant application, itemizing a "Reply to Office Action Dated March 11, 2004", and bearing a USPTO date stamp of June 14, 2004. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.² Accordingly, it is concluded that Applicants filed a reply in response to the March 11, 2004 Office action on June 14, 2004, and therefore should not have been assessed a delay of one hundred seventy-nine (179) days, but rather three (3) days.

Furthermore, in view of applicant's amendment filed June 14, 2004, the Office should have been assessed one hundred ninety-five (195) days of PTO delay pursuant to 37 C.F.R. §1.703(a)(2), not twenty (20) days, because the Notice of Allowance was not mailed until April 27, 2005.

¹ Applicants filed the PTA application with the issue fee.

² MPEP 503.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one thousand thirty-two (1032) days** (1035 (840+195) days of PTO delay and 3 days of applicant delay).

Receipt of the \$200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in black ink, appearing to read "Karin Ferriter" with a stylized flourish below it.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen